SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1951

No. 625

COLLEGE HOMES, INC.,

Petitioner,

vs.

UNITED STATES OF AMERICA

REPLY BRIEF OF PETITIONER

Questions Presented

1. Did the District Court deprive Petitioner of Its Property Without Due Process of Law, Contrary to the Fifth Amendment To The Constitution of the United States of America?

2. Did the District Court enter Judgment Prejudicial to the Petitioner Without a Valid Trial?

Statement

Attached hereto and made a part hereof (Appendix 1 through 21 inclusive) are photo copies of letters, telegrams, and reference data which sets forth the efforts of Petitioner to obtain legal counsel and an impartial investigation of the facts concerning the criminal conspiracy and collusion. Different reasons were given for the withdrawal of each counsel, but a careful reading of these exhibits and particu-

larly no. 9 (letter addressed to Mr. Rice of the Federal Bureau of Investigation) will disclose that:

> ". . . Political patronage within the State made it difficult to obtain high class and reputable counsel as we had nothing to offer them except a tough job of attempting to prosecute a group of powerful politicians and bureaucrats from whom most legal offices, directly or indirectly, apparently relied for business . . ." (Append. 9, pg. 7.)

Since the defense of Petitioner was fraud and deceit involving conspiracy and collusion, a complicated legal problem, and since the personalities involved were so influential, each attorney capable of handling such a case found reasons for withdrawing. While legal assistance was "peculiarly unavailable" to the Petitioner for unexpressed reasons, the record, will show by the Docket Entries and photo copies of letters and data attached hereto as Appendix 1 through 21 inclusive, Petitioner sought to employ only high class, competent and reputable counsel with honesty, integrity, and experience to consider handling the very complex and far reaching case of conspiracy to defraud the United States Government, which to date continues to be completely "whitewashed" and buried with the other corruption scandals.

Extensions to Plead

True, six (6) orders were entered at various times extending Petitioner's time to file answer. However, in each case, excepting one, the applications were requested by and granted to legal counsel then employed, as follows:

First Extension—to Whitten and Whitten—July 11, 1950 (Append. 1);

Second Extension—to Whitten and Whitten—July 21, 1950 (Docket Entry R. 118);

Third Extension to A. C. Palmer in person Sept. 8, 1950 (Docket Entry R. 119);

Fourth Extension to Dudley, Du Vall & Dudley, Sept. 21, 1950 (Append. 5);

Fifth Extension to Dudley, Du Vall & Dudley, Oct. 2, 1950 (Docket Entry R. 119);

Sixth Extension to Dudley, Du Vall & Dudley, Oct. 26, 1950 (Docket Entry R. 119).

Furthermore, for reasons unexplained, the Statement of Docket Entries are incomplete and it makes no record of the fact that Whitten and Whitten were asked to withdraw because of their apparent change of attitude on matters other than the merits of the case. (Append. 9, pg. 3 and 4.)

Docket Entries fail to record that Dudley, Du Vall & Dudley ever were attorneys for Petitioner, were officially employed to represent Petitioner or that they requested and obtained the last three (3) orders of extension, which were granted. Docket Entries fail to record that Dudley, Du Vall & Dudley ever filed an application for leave to withdraw as counsel for Petitioner, or that a court order was ever filed permitting them to withdraw as attorneys for Petitioner.

Answer was filed by Alden Charles Palmer, personally, Friday, October 27, 1950 at 4:58 p.m. (R. 119).

Reasons for Withdrawal of Counsel

The memorandum letter addressed to Mr. John Rice, Federal Bureau of Investigation, dated March 28, 1951, and delivered November 15, 1951, expresses the reaction of various other legal offices contacted (Append. 9). However, it does not state that Judge Chandler, on September 19, 1950, refused to have Mr. R. L. Hert's name expunged from the court record as having appeared as our counsel at the time the receiver was appointed June 28, 1950, (Append. 2, 3, & 4) even though Mr. Hert requested same and Mr. Shelton,

U. S. District Attorney, by written approval on the original application recommended that Judge Chandler sign the Order.

In lieu of signing the Order, Judge Chandler stated to Mr. Hert that he wanted to protect Mr. Hert, (by not signing the order), and when the president of Petitioner asked Judge Chandler if petitioner were not entitled to some protection —Judge Chandler's reply was that petitioner would be fully protected, and for petitioner to rest assured that the case would be properly set up for appeal in the Appellate Court —in plain English, Judge Chandler pre-judged this case even before it was set for trial.

As trial date approached upon receiving notification from Mr. Coe—by mail—at Los Angeles that he would be unable to represent us—I returned to Oklahoma City (Monday, March 12, 1951) and paid a visit to Mr. Shelton's U. S. District Attorney's office to inform him that unfortunately we were without counsel and did not know what to do. Mr. Shelton stated that we *had* to have counsel and recommended that I call on a Mr. John E. Marshall who was honest and upright and a very fine attorney who commanded the respect of both the U. S. District Attorney's office as well as that of the various Judges in Oklahoma City—adding that if Mr. Marshall could be obtained his fees would be reasonable. This is the last place in the State where Petitioner should seek or be given a recommendation of where to obtain proper counsel, yet in desperation I did call on Mr. Marshall and the first thing he asked was if Judge Chandler had sent me to him.

A couple of days later while I was in Mr. Marshall's office reviewing our case, Judge Chandler telephoned Mr. Marshall and stated he understood that Mr. Marshall was going to represent Petitioner, and then asked him "who" sent Mr. Palmer to him; Mr. Marshall answered by stating "a

friend" had recommended him but did not add that the "friend" was Mr. Shelton, the U. S. District Attorney.

Mr. Marshall informed Judge Chandler that although there had been filed with the Clerk of the Court voluminous documentary data including answer, amended answers, 68 page story and various photo copy records that *not a single bit of the data filed* had been offered or admitted into the Court Records as evidence in evidence. Mr. Marshall also told Judge Chandler that he had not as then decided to represent Petitioner but if he did he would require at least a thirty (30) day continuance to prepare his case.

Neither Judge Chandler nor Mr. Shelton would assure him of the extension of time to prepare the case and Mr. Marshall considered that with no evidence admitted into the record at time of pre-trial, that if Judge Chandler wanted to, he would render a decision March 19, 1951 immediately, thereby closing the case against Petitioner without any possible chance of appeal—due to the lack of evidence in the record. He therefore could not attempt to represent Petitioner at the trial without a continuance.

However, after judgment, at a later date at the request of Mr. Palmer, Mr. Marshall did prepare a motion for new trial. A couple of days before the hearing of this motion, Mrs. Leatherman, secretary to Mr. Shelton, the U. S. District Attorney, requested Mr. Marshall *not to do anything* in the College Homes Case that would disturb the pleasant relations that exist between the U. S. District Attorney's office and himself.

That same afternoon while Petitioner's president was in Mr. Marshall's office Mr. Shelton telephoned Mr. Marshall and in the conversation asked Mr. Marshall *not to put him* (Mr. Shelton) *on the spot* when we appeared in Court asking for a trial.

Earlier when Judge Dudley withdrew from the case he stated to Petitioner's president that the case was so corrupt

and far reaching that only by an exposure on a National scale of the corruption with the nation-wide newspaper publicity and National Broadcasting network news commentary could the case be exposed for what it was; namely, conspiracy to defraud the United States Government and certain individuals out of hundreds of thousands of dollars —in addition to the losses which the College Homes, Inc., had been placed to by the conspiracy and fraud involved.

The list of items attached hereto as exhibits, and designated Append. 1-21, inclusive, having reference to Petitioner's efforts to obtain legal counsel and criminal investigations, is as follows:

Exhibit Description

1. W & W letter, July 11, 1950—First Extension of Time granted.

2. C. H. Inc. letter, September 18, 1950—To Whom It May Concern. (Exhibit "O", page 312 of Defendant's Exhibit #1, R. 1.)

3. R. L. Hert, Attorney's Application, Sept. 18, 1950, name expunged. (Exhibit P, page 313, of Defendant's Exhibit #1, R. 1.)

4. Order September 18, 1950, Court refused to sign. (Exhibit Q, page 314 of Defendant's Exhibit #1, R. 1.)

5. D, D, & D letter, October 5, 1950—Fourth Extension of time.

6. D, D, & D letter, December 9, 1950—Confirming previous employment. (Exhibit #4, page 333, R. 1.)

7. D, D, & D letter, March 6, 1951—Re: Injustice. (Exhibit #5, page 334, R. 1.)

8. W.O.C. letter, February 26, 1951—Re: Legal Counsel. (Exhibit #6, page 336, R. 1.)

9. C. H. Inc., nine (9) page letter dated March 23, 1951, addressed to Mr. John Rice, Federal Bureau of Investigation, delivered to Mr. Rice on November 15, 1951, the day

before the hearing by the Tenth Circuit Court of Appeals at Wichita, Kansas—Re: Comments and opinions stated by various attorneys.

10. J. E. M. Letter, November 23, 1951, to Judge Sam C. Bratton concerning Department of Justice's instructions to F.B.I. to discontinue further investigation as of April 26, 1951.

11. Judge Bratton's letter of acknowledgement, November 26, 1951.

12. Motion for directive filed 8:50 a.m., March 19, 1951 before "so called trial" commenced, requesting criminal investigation be started and charging Dr. Henry G. Bennett and Hugh Askew directly, and naming 26 other persons, most of whom were involved directly or indirectly in a conspiracy to defraud the Government. (Page 325, R. 1, R. 119.)

13. C. H. Inc. letter, November 21, 1951, to Federal Bureau of Investigation. (Exhibit "L", page 306, R. 1.)

14. C. H. Inc., telegram, November 21, 1951, to Hon. Harry S. Truman. (Exhibit page 339, R. 1.)

15. C. H. Inc. letter November 21, 1951, to Hon. J. Howard McGrath. (Exhibit M, page 307, R. 1.)

16. C. H. Inc. letter November 21, 1951, to Robert E. Shelton, U. S. District Attorney. (Exhibit K, page 305, R. 1.)

17. U. S. Senate Investigating Sub-Committee letter Dec. 11, 1950. (Exhibit N, page 380, R. 1.)

18. C. H. Inc. letter, December 23, 1951, Judge Chandler, copy of which was filed and entered on the Court's Docket but apparently deleted from official records reported in Statement of Docket Entries. (Page 309, R. 1.)

19. Excerpts of C. H., Inc., telegram on July 14, 1951 to Hon. Harry S. Truman. (Page 258, R. 1.)

20. C. H., Inc., telegram, January 16, 1951 to Honorable Burnett R. Maybank, U. S. S. (Page 340, R. 1.)

21. Comments by Cortright quoting Franklin D. Richards, F.H.A. Administrator—misleading and slanted statements.

It is ironic that items 13 through 20 inclusive, although entered on the Docket at Oklahoma City, are *not* included in Statement of Docket Entries. (R. 118, 119, 120, 120a.)

Incomplete Statement in Brief for Opposition

Brief in opposition, page 2 states:

> "This is a civil suit by the United States for recovery of the sums due on three promissory notes executed by Petitioner and for the foreclosure of one chattel and three realty mortgages securing the notes. The original payees and mortgagees were insured against loss pursuant to the provisions of Section 608 of the National Housing Act (56) Stat. 301, as amended, (12 U.S.C. 1743) relating to the insurance of mortgage loans. Upon Petitioner's default in payment, the notes and mortgages were assigned to the United States and the original payees and mortgagees were reimbursed under their contracts of insurance. (R. 2-14.)"

The foregoing is correct as far as it goes, yet it does not mention that mortgage foreclosure procedures were not commenced until *over one year* after default.

Argument

By not commencing foreclosure within one (1) year, as called for by the National Housing Act, Rules and Regulations, it is reasonable to conclude that the Federal Housing Commissioner *himself* defaulted in his action to institute foreclosure proceedings and thereby forfeited any legal right to file foreclosure dockets at a date beyond the one (1) year period provided by law.

The above point is secondary to the real issue, namely that the facts support the claim that the mortgages and notes were null and void, having been executed as a result of fraud and deceit involving conspiracy and collusion in a well conceived pattern to defraud the United States Govern-

ment and other innocent persons out of hundreds of thousands of dollars.

Mr. Franklin D. Richards, Federal Housing Administrator and Commissioner in a letter addressed to Mr. Alden Charles Palmer, President of College Homes, Inc., dated July 6, 1950, stated as follows:

> "The reason foreclosure suit was commenced at this time was simply that all three mortgages have been in default for *more than one year* and the facts did not appear to justify further delay." (Defendant's Exhibit 70, page 248 of defendant's Exhibit #1, R. 1.)

As judgment in the amount of $578,548.87 was awarded (R. 111) Mr. Shelton, U. S. District Attorney stated (R. 111):

> "This case, Your Honor, the appraisement is waived and will be, at least, six months before there is a sale."

and the court agreed (R. 111).

Petitioner contends that the commissioner has deliberately attempted to conceal this conspiracy by having issued 2½ per cent interest bearing 10 year debenture bonds, to the mortgagee, so the true value of the properties may be concealed for ten years or longer, if necessary, and by waiving the appraisement the plaintiff forfeited rights to a deficiency judgment against the defendant, which could run into several hundred thousand dollars: Had the properties been placed on the open market and sold on a basis of competitive bidding in our opinion the end result would have been a sale amounting to not to exceed $.20 on the dollar or a gross loss of several hundreds thousands of dollars to the government, by this procedure the Plaintiff would have had the right to file for a deficiency judgment to offset the loss by the sale.

However, the Plaintiff chose to conceal *indefinitely* the

true facts involving the conspiracy to defraud the government by lettering the title of the properties remain in the name of the FHA Commissioner as long as necessary to conceal the true value of the property.

Petitioner contends that the very courts that are pledged to deal in equity and justice have projected themselves into a continuing act of conspiracy by rendering a judgment of nearly $600,000 on a null and void mortgage foreclosure procedure, yet waiving all rights to a deficiency judgment against the Plaintiff in an amount of several hundred thousand dollars.

Petitioner does not contend that judgment cannot be rendered in a civil suit where the party appears *pro se,* but on the contrary that the record shows that petitioner did not appear *pro se* (R. 59, 78, 81), although it attempted to do so. Petitioner does contend that the record in this case demonstrates that competent and experienced counsel was essential to an impartial hearing and a proper presentation of Petitioner's defense of fraud and deceit involving conspiracy and collusion to defraud the United States Government. That this is especially true where the trial judge rendered a decision without examining the exhibits of this Defendant but in fact had pre-determined that it would be necessary for Defendant to appeal.

Contrary to the statement in the brief in opposition to the petition herein, Petitioner's president did not refuse to testify directly with respect to the allegations of fraud and conspiracy (R. 100-111), but in fact attempted to do so (R. 104, 105). That a proper presentation of such testimony required preparation by competent legal counsel was apparent even to Petitioner's president.

As a non-lawyer he testified (R. 104):

> ". . . That there was a conspiracy and *occl*usion between Dr. Bennett and his organization and this office over here in falsifying F.H.A. procedure, analysis,

and so forth, to get housing in Stillwater, at the expense of the government and somebody else for nothing."

He further asserted that the extent of the conspiracy would have to be expanded by proper counsel and that he had consistently requested the District Attorney to authorize the F.B.I. to investigate persons he had named in order to bring out the pattern and extent of the conspiracy which had been carried out (R. 105).

Conclusion

In light of the disposition of this case by the Tenth Circuit Court of Appeals (R. 122) in observing that "this case is utterly without merit", Petitioner believes that the Appellate Court failed to consider the implication of the waiver of the appraisement, the waiver of deficiency judgment, the fact that the Trial Court announced its decision within less than 1½ hours even though at the Trial Court's suggestion it had admitted into evidence Defendant's Exhibits Nos. 1 through 7 of some 275 pages, after first denying two requests for an impartial investigation and motion for directive to indict the ring leaders for conspiracy to defraud the United States Government. Otherwise it would appear that the members of the Court lacked the courage and conviction to uphold the judgment with a written opinion; therefore Appellant respectfully asks this court to grant this petition, reverse the judgment and remand this case to the District Court for a new trial or for trial so as to return the properties to the Petitioner on an equitable basis.

Disregarding the basic fraud and conspiracy under which the mortgages and notes were executed the waiver of the deficiency judgment is in itself conclusive that the Government of the United States has been defrauded out of several hundred thousand dollars, in addition to the losses of the petitioner. Therefore, petitioner requests an impartial

investigation in order that the guilty persons, whoever they may be, may be brought to justice (Append. 13) or that the petitioner and its President, Alden Chas. Palmer, be indicted for conspiracy to defraud the United States Government.

In closing therefore, it is important that the highest court of our land carefully review the opinion of the Tenth Circuit Court entered as an Order reference to this case December 3, 1951 to redetermine the question of whether or not to put its stamp of approval upon an inherently dishonest transaction cleverly engineered and executed through a Federal Agency (Federal Housing Administration) of the United States Government in conspiracy to defraud the United States Government and innocent persons out of several hundred thousands of dollars and with a continuing conspiracy to in turn endeavr to completely "whitewash" and cover up by means of a legal and technical procedure labeled "*foreclosure*".

This case offers an opportunity to apply the conception of justice as set forth in the opening words of the *Institutes of Justinian,* the key to that vast edifice of Roman Law which embodied the experience of the ancient world. This classical definition of *justice,* a legal rendering of the Golden Rule, and covering economic as well as political rights, is:

> "*Justice is the constant and enduring will to give to every man his right.*"

It is respectfully submitted that this petition should be granted.

COLLEGE HOMES, INC.

By ALDEN CHAS. PALMER,
President,
3255 Palmer Drive,
Los Angeles 65, California.